

AMENDED IN ASSEMBLY APRIL 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 179

Introduced by Assembly Members Gorell and Williams

January 24, 2011

An act to ~~add Chapter 5 (commencing with Section 653.77) to Title 15 of Part 1 of the Penal Code, relating to electronic monitoring; amend Section 166 of the Penal Code, relating to contempt.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 179, as amended, Gorell. ~~Electronic monitoring; removing or disabling offense; Contempt: criminal street gangs.~~

Existing law provides that disobedience of the terms of an injunction that restrains the activities of a criminal street gang or any of its members constitutes contempt of court, and is punishable as a misdemeanor. The punishment for a misdemeanor is imprisonment in a county jail not exceeding 6 months, or a fine not exceeding \$1,000, or both.

This bill would specify the penalties for a violation of the above provision to include imprisonment in a county jail for not more than 6 months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment. For a 2nd violation occurring within 7 years of the first violation, the bill would provide for imprisonment in a county jail for not more than 9 months, or by a fine not exceeding \$2,500, or by both that fine and imprisonment. For a 3rd and subsequent violation occurring within 7 years of a prior violation, the bill would provide for imprisonment in a county jail for not more than one year, or by a fine not exceeding \$5,000, or by both that fine and imprisonment.

Because this bill would increase the penalties for an existing crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides various programs of in-home detention and monitoring that include wearing global positioning system (GPS) devices, as specified. Existing law permits, and with respect to certain sex offenders requires, the use of electronic monitoring by county probation departments and the Department of Corrections and Rehabilitation to electronically monitor the whereabouts of persons on probation and parole respectively.~~

~~This bill would provide that unauthorized removal, as specified, of an electronic, GPS, or other monitoring device affixed for purposes of a criminal sentence, juvenile court disposition, parole, or probation is an offense punishable by imprisonment in a county jail for one year, or a \$1,000 fine, or both, if the underlying offense was a misdemeanor; or by imprisonment in the state prison for 16 months, 2 year, or 3 years if the underlying offense is a felony.~~

~~By creating a new crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 166 of the Penal Code is amended to
2 read:

3 166. (a) Except as provided in paragraph (9), and subdivisions
4 (b), (c), and (d), every person guilty of any contempt of court, of
5 any of the following kinds, is guilty of a misdemeanor:

1 (1) Disorderly, contemptuous, or insolent behavior committed
2 during the sitting of any court of justice, in the immediate view
3 and presence of the court, and directly tending to interrupt its
4 proceedings or to impair the respect due to its authority.

5 (2) Behavior as specified in paragraph (1) committed in the
6 presence of any referee, while actually engaged in any trial or
7 hearing, pursuant to the order of any court, or in the presence of
8 any jury while actually sitting for the trial of a cause, or upon any
9 inquest or other proceedings authorized by law.

10 (3) Any breach of the peace, noise, or other disturbance directly
11 tending to interrupt the proceedings of any court.

12 (4) Willful disobedience of the terms as written of any process
13 or court order or out-of-state court order, lawfully issued by any
14 court, including orders pending trial.

15 (5) Resistance willfully offered by any person to the lawful
16 order or process of any court.

17 (6) The contumacious and unlawful refusal of any person to be
18 sworn as a witness or, when so sworn, the like refusal to answer
19 any material question.

20 (7) The publication of a false or grossly inaccurate report of the
21 proceedings of any court.

22 (8) Presenting to any court having power to pass sentence upon
23 any prisoner under conviction, or to any member of the court, any
24 affidavit or testimony or representation of any kind, verbal or
25 written, in aggravation or mitigation of the punishment to be
26 imposed upon the prisoner, except as provided in this code.

27 (9) Willful disobedience of the terms of any injunction that
28 restrains the activities of a criminal street gang or any of its
29 members, lawfully issued by any court, including an order pending
30 trial.

31 (A) *A violation of this paragraph is punishable by imprisonment*
32 *in a county jail for not more than six months, or by a fine not*
33 *exceeding one thousand dollars (\$1,000), or by both that*
34 *imprisonment and fine.*

35 (B) *A second violation of this paragraph occurring within seven*
36 *years of a prior violation is punishable by imprisonment in a county*
37 *jail for not more than nine months, or by a fine not exceeding two*
38 *thousand five hundred dollars (\$2,500), or by both that*
39 *imprisonment and fine.*

1 (C) A third or subsequent violation of this paragraph occurring
2 within seven years of a prior violation is punishable by
3 imprisonment in a county jail for not more than one year, or by a
4 fine not exceeding five thousand dollars (\$5,000), or by both that
5 imprisonment and fine.

6 (D) The penalties in this paragraph shall apply unless a greater
7 penalty is authorized by other provisions of law.

8 (b) (1) Any person who is guilty of contempt of court under
9 paragraph (4) of subdivision (a) by willfully contacting a victim
10 by telephone or mail, or directly, and who has been previously
11 convicted of a violation of Section 646.9 shall be punished by
12 imprisonment in a county jail for not more than one year, by a fine
13 of five thousand dollars (\$5,000), or by both that fine and
14 imprisonment.

15 (2) For the purposes of sentencing under this subdivision, each
16 contact shall constitute a separate violation of this subdivision.

17 (3) The present incarceration of a person who makes contact
18 with a victim in violation of paragraph (1) is not a defense to a
19 violation of this subdivision.

20 (c) (1) Notwithstanding paragraph (4) of subdivision (a), any
21 willful and knowing violation of any protective order or stay-away
22 court order issued pursuant to Section 136.2, in a pending criminal
23 proceeding involving domestic violence, as defined in Section
24 13700, or issued as a condition of probation after a conviction in
25 a criminal proceeding involving domestic violence, as defined in
26 Section 13700, or elder or dependent adult abuse, as defined in
27 Section 368, or that is an order described in paragraph (3), shall
28 constitute contempt of court, a misdemeanor, punishable by
29 imprisonment in a county jail for not more than one year, by a fine
30 of not more than one thousand dollars (\$1,000), or by both that
31 imprisonment and fine.

32 (2) If a violation of paragraph (1) results in a physical injury,
33 the person shall be imprisoned in a county jail for at least 48 hours,
34 whether a fine or imprisonment is imposed, or the sentence is
35 suspended.

36 (3) Paragraphs (1) and (2) apply to the following court orders:

37 (A) Any order issued pursuant to Section 6320 or 6389 of the
38 Family Code.

39 (B) An order excluding one party from the family dwelling or
40 from the dwelling of the other.

1 (C) An order enjoining a party from specified behavior that the
2 court determined was necessary to effectuate the orders described
3 in paragraph (1).

4 (4) A second or subsequent conviction for a violation of any
5 order described in paragraph (1) occurring within seven years of
6 a prior conviction for a violation of any of those orders and
7 involving an act of violence or “a credible threat” of violence, as
8 provided in subdivisions (c) and (d) of Section 139, is punishable
9 by imprisonment in a county jail not to exceed one year, or in the
10 state prison for 16 months or two or three years.

11 (5) The prosecuting agency of each county shall have the
12 primary responsibility for the enforcement of the orders described
13 in paragraph (1).

14 (d) (1) A person who owns, possesses, purchases, or receives
15 a firearm knowing he or she is prohibited from doing so by the
16 provisions of a protective order as defined in Section 136.2 of this
17 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
18 of the Code of Civil Procedure, shall be punished under the
19 provisions of ~~subdivision (g) of Section 12021~~ *Section 29825*.

20 (2) A person subject to a protective order described in paragraph
21 (1) shall not be prosecuted under this section for owning,
22 possessing, purchasing, or receiving a firearm to the extent that
23 firearm is granted an exemption pursuant to subdivision (h) of
24 Section 6389 of the Family Code.

25 (e) (1) If probation is granted upon conviction of a violation of
26 subdivision (c), the court shall impose probation consistent with
27 Section 1203.097 of the Penal Code.

28 (2) If probation is granted upon conviction of a violation of
29 subdivision (c), the conditions of probation may include, in lieu
30 of a fine, one or both of the following requirements:

31 (A) That the defendant make payments to a battered women’s
32 shelter, up to a maximum of one thousand dollars (\$1,000).

33 (B) That the defendant provide restitution to reimburse the
34 victim for reasonable costs of counseling and other reasonable
35 expenses that the court finds are the direct result of the defendant’s
36 offense.

37 (3) For any order to pay a fine, make payments to a battered
38 women’s shelter, or pay restitution as a condition of probation
39 under this subdivision or subdivision (c), the court shall make a
40 determination of the defendant’s ability to pay. In no event shall

1 any order to make payments to a battered women's shelter be made
2 if it would impair the ability of the defendant to pay direct
3 restitution to the victim or court-ordered child support.

4 (4) If the injury to a married person is caused in whole or in
5 part by the criminal acts of his or her spouse in violation of
6 subdivision (c), the community property may not be used to
7 discharge the liability of the offending spouse for restitution to the
8 injured spouse required by Section 1203.04, as operative on or
9 before August 2, 1995, or Section 1202.4, or to a shelter for costs
10 with regard to the injured spouse and dependents required by this
11 subdivision, until all separate property of the offending spouse is
12 exhausted.

13 (5) Any person violating any order described in subdivision (c)
14 may be punished for any substantive offenses described under
15 Section 136.1 or 646.9. No finding of contempt shall be a bar to
16 prosecution for a violation of Section 136.1 or 646.9. However,
17 any person held in contempt for a violation of subdivision (c) shall
18 be entitled to credit for any punishment imposed as a result of that
19 violation against any sentence imposed upon conviction of an
20 offense described in Section 136.1 or 646.9. Any conviction or
21 acquittal for any substantive offense under Section 136.1 or 646.9
22 shall be a bar to a subsequent punishment for contempt arising out
23 of the same act.

24 *SEC. 2. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *the only costs that may be incurred by a local agency or school*
27 *district will be incurred because this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*

33 ~~SECTION 1. Chapter 5 (commencing with Section 653.77) is~~
34 ~~added to Title 15 of Part 1 of the Penal Code, to read:~~

35
36 ~~CHAPTER 5. DISABLING ELECTRONIC MONITORING DEVICES~~
37

38 ~~653.77. (a) Any person who willfully removes or disables an~~
39 ~~electronic, global positioning system (GPS), or other monitoring~~
40 ~~device affixed to his or her person, or the person of another,~~

1 knowing that the device was affixed as a condition of a criminal
2 sentence, juvenile court disposition, parole, or probation, is guilty
3 of a public offense.

4 (b) (1) Any person subject to an electronic, GPS, or other
5 monitoring device based on a misdemeanor conviction or a juvenile
6 adjudication for a misdemeanor offense, who willfully violates
7 subdivision (a) is guilty of a misdemeanor, punishable by
8 imprisonment in a county jail for up to one year, by a fine of up
9 to one thousand dollars (\$1,000), or both that fine and
10 imprisonment.

11 (2) Except as provided in subdivision (c), any person who
12 willfully removes or disables an electronic, GPS, or other
13 monitoring device affixed to another person where that device was
14 affixed to the other person based upon a misdemeanor conviction,
15 or based upon a juvenile adjudication for a misdemeanor offense,
16 is guilty of a misdemeanor, punishable by imprisonment in a county
17 jail for up to one year, by a fine of up to one thousand dollars
18 (\$1,000), or both that fine and imprisonment.

19 (c) (1) Any person subject to an electronic, GPS, or other
20 monitoring device based on a felony conviction, juvenile
21 adjudication for a felony offense, or terms of parole for a felony
22 offense, who willfully violates subdivision (a) is guilty of a felony,
23 punishable by imprisonment in the state prison for 16 months, two
24 year, or three years.

25 (2) Except as provided in subdivision (c), any person who
26 willfully removes or disables an electronic, GPS, or other
27 monitoring device affixed to another person where that device was
28 affixed to the other person based on a felony conviction or a
29 juvenile conviction for a felony offense is guilty of a felony,
30 punishable by imprisonment in the state prison for 16 months or
31 three years.

32 (d) Nothing in this section shall be construed to prevent
33 punishment pursuant to any other provision of law that imposes a
34 greater or more severe punishment, including, but not limited to,
35 Section 594.

36 (e) This section shall not apply to the removal or disabling of
37 an electronic, GPS, or other monitoring device by a physician,
38 emergency medical services technician, or by any other emergency
39 response or medical personnel when doing so is necessary during
40 the course of medical treatment of the person subject to the

1 ~~electronic, GPS, or other monitoring device. This section shall~~
2 ~~also not apply where the removal or disabling of the electronic,~~
3 ~~GPS, or other monitoring device is authorized, or required, by a~~
4 ~~court of law, or by the law enforcement, probation, parole authority,~~
5 ~~or other entity responsible for placing the electronic, GPS, or other~~
6 ~~monitoring device upon the person, or that has, at the time, the~~
7 ~~authority and responsibility to monitor the electronic, GPS, or~~
8 ~~other monitoring device.~~

9 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
10 ~~Section 6 of Article XIII B of the California Constitution because~~
11 ~~the only costs that may be incurred by a local agency or school~~
12 ~~district will be incurred because this act creates a new crime or~~
13 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
14 ~~for a crime or infraction, within the meaning of Section 17556 of~~
15 ~~the Government Code, or changes the definition of a crime within~~
16 ~~the meaning of Section 6 of Article XIII B of the California~~
17 ~~Constitution.~~